

CHAD BARRY BARNES,
Plaintiff,

Civ. No. 13-00002 ACK-RLP

SEA HAWAII RAFTING, LLC,)
KRIS HENRY, M/V TEHANI,)
et al.)
)
Defendants.)

Pursuant to the Ninth Circuit's writ of mandamus, Plaintiff Barnes is entitled to an award of maintenance at the rate of \$34 per day, subject to a potential upward modification after trial. Barnes v. Sea Hawaii Rafting, LLC, – F.3d –, 2018 WL 1870090, at *18 (9th Cir. Mar. 28, 2018).¹

Finally, we note that under the district court's view of Hall, an injured seaman would be faced with a Hobson's choice: He could either stipulate to the reasonableness of the rate supported by the shipowner's evidence and thereby give up the possibility of proving a higher rate at trial, or he could decline to do so, in which case he would not receive payments for basic living expenses until after trial. *Id.*

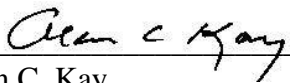
¹ By separate concurrent minute order the Court has scheduled a trial involving Plaintiff Barnes' claims for maintenance and cure to commence at 9:00 a.m. on Tuesday, June 12, 2018.

It is remarkable that in its review of the District Court's extensive ongoing efforts to resolve the amount of maintenance to which Plaintiff Barnes is entitled, the Ninth Circuit was apparently unaware that back in 2013—nearly five years ago—the District Court proposed a stipulation to the parties under which they would stipulate to a maintenance rate of \$30 per day, subject to further adjustment should either party demonstrate at trial that the rate should be higher or lower; and that Defendant Henry agreed to the proposed stipulation but Plaintiff Barnes would not so agree. See Order Denying Plaintiff's Third Motion for Summary Judgment for Payment of Maintenance, ECF No. 120 at 3 n.2, 12.²

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, May 2, 2018.





Alan C. Kay
Sr. United States District Judge

Barnes v. Sea Hawaii Rafting, LLC, Kris Henry, M/V Tehani, et al., Civ. No. 13-00002 ACK-RLP, Order Regarding Maintenance.

² Perhaps this oversight was due to the fact that Defendant Henry was not represented by counsel at the argument held before the Ninth Circuit. See Barnes, 2018 WL 1870090, at *1.